

THE PARADOX OF FREEDOM OF RELIGION AND BELIEF IN INDONESIA

RAFENDI DJAMIN¹

A. Introduction

In the last five years, the violation of freedom of religion and belief in Indonesia has increased in intensity. The violation does not only bear negative consequences towards the enjoyment of the said rights, but also of other rights especially the socio-cultural rights such as the right of proper education for children, the rights to decent work and livelihood.

The problems of freedom of religion and belief in Indonesia can be practically summarized into several categories: **First**, The target of violation (which always targets the minority such as the Ahmadiyya, the Christians, and indigenous faiths); **Second**, Its methods (discrimination, physical violence, murder, criminalization, forced relocation, and systematic stigmatization);² **Third**, the modus operandi (generally, the violation are made legal by discriminatory state legislations, which are a direct attack towards religious freedom). In practice, these discriminatory legislations reflect the will of a small portion of the religious majority, which claims to be the will of all. And the state is guilty either by commission or omission in most cases; **Fourth**, the disregard for ratified international human rights instrument. Notwithstanding many such instruments getting ratification these last years, the number of discriminatory legislations increases exponentially, especially in the local legislation.³ The general outlook that puts no stock in the respect for differences and minority group is pervasive amongst the state apparatus, local government, law enforcers and the general society.

It can be seen clearly the paradox; on the one hand there are constitutional progresses and better international relations while on the other hand the discriminatory legislations in direct contradiction to the religious freedom are not only still produced but proliferated. The state has clearly failed to guarantee the rights to religious freedom.

¹ Indonesian Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR).

² See, HRWG Team, *Menuntut Pemenuhan Hak-hak Konstitusional Penghayat Kepercayaan terhadap Tuhan Yang Maha Esa: Seri Kertas Posisi* (Jakarta: HRWG, 2011).

³ Several local regulation, i.e.:

- a. Regulation of West Java Governor Number. 12 of 2011 on the Prohibition of Ahmadiyah Congregation's Activities;
- b. Decree of East Java Governor number 188/94/KPTS/013/2011 consisting of the prohibition of activities of Ahmadiyah Indonesia in East Java;
- c. Governor of Banten also released Governor Regulation Number 5 of 2011 on the prohibition of activities of Ahmadiyah Congregation's members;
- d. Decree of Samarinda Mayor (East Kalimantan) number 200/160/BKPPM.I/II/2011 subjecting The Instruction of Terminating and Closing the Activities of JAI in Samarinda;
- e. Decree of the Regent of Kampar (Riau) Number 450/PUM/2011/68;
- f. Decree of the Mayor of Pekanbaru (Riau);
- g. On 1 September 2008, Governor of South Sumatera, Mahyuddin NS, delivered a Decree number 563/KPTS.Ban.Kesbangpol & Linmas/2008 on prohibition of Ahmadiyah sect and its members and caretakers' activities in region of South Sumatra.

B. State of the Law

1. Constitution

In the 1945 Constitution, there are several passages guaranteeing the rights to religious freedom, namely the articles 28E, 28I, and 29;

Article 28E

- (1) Each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.
- (2) Each person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.
- (3) Each person has the right to freely associate, assemble, and express his opinions.⁴

Article 28I

- (1) The rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance.
- (2) Each person has the right to be free from acts of discrimination based on what grounds ever and shall be entitled to protection against such discriminative treatment.⁵

Article 29

- (1) The state is based on the belief in the One and Only God.
- (2) The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief.⁶

However, there are some restrictions to this freedom, as is laid out in the Article 28J Indonesia Constitution:

- (1) Each person has the obligation to respect the fundamental human rights of others while partaking in the life of the community, the nation, and the state.
- (2) In exercising his rights and liberties, each person has the duty to accept the limitations determined by law for the sole purposes of guaranteeing the recognition and respect of the rights and liberties of other people and of

⁴ Indonesia Constitution, Article 28E

⁵ Indonesia Constitution, Article 28I

⁶ Indonesia Constitution, Article 29

satisfying a democratic society's just demands based on considerations of morality, religious values, security, and public order.⁷

In a glance, these restrictions are necessary to guarantee the equal enjoyment of rights for all people, and to be just, however they are oftentimes used by some certain groups to restrict the enjoyment of the religious freedom and freedom of expression. The government is also frequently restricts those rights on the base that its enjoyment endangers public security and order. The problem lies in the one-sided interpretation of the said article by the state apparatus, the law enforcement agencies and some certain groups, disregarding the greater picture on the meaning, goals, and procedures of the restriction; for instance by making religious values as the references of the restriction.⁸ There are also non-constitutional restrictions, through decrees of the president, ministers and local governments.

2. The Legislation Guaranteeing the Freedom of Speech and Religious Freedom

Aside from the ratified international human rights instrument, Indonesia has several legislations such as the Human Rights Law no 39/1999. The said legislation strengthens the guarantee on the freedom of expression and religious freedom, especially in the articles 4, 12, and 22. The Article 4 states that: "*The right to life, the right to not to be tortured, the right to freedom of the individual, to freedom of thought and conscience, the right not to be enslaved, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be diminished under any circumstances whatsoever.*"⁹

The Article 23 (2) states, "*Everyone has the freedom to hold, impart and widely disseminate his beliefs, orally or in writing through printed or electronic media, taking into consideration religious values, morals, law and order, the public interest and national unity.*" And the Article 25 states, "*Every citizen has the right to express his opinion in public, and this includes the right to strike, according to prevailing law.*"¹⁰ In practice, however, this law is disregarded. What prevail are the legislations that are in direct violation of religious freedom, hence the pervasive persecutions against religious minority and religious freedom in general.

3. Specific and Criminal Law on Hate Speech

Several laws specifically treat hate speech, for instance the Indonesian Criminal Code, in the articles 156 and 157; and also the Anti Racial Discrimination Law no 40/2008, in article 4, points (1), (2), and (3).

⁷ Indonesia Constitution, Article 29

⁸ The restriction, substantially, contrary with the Art. 20 ICCPR

⁹ Indonesian Human Rights Law no 39/1999 Article 4

¹⁰ Indonesian Human Rights Law no 39/1999 Article 23 (2) and 25.

Article 156 of the Indonesian Criminal Code:

“The person who publicly gives expression to feeling of hostility, hatred, contempt, against one or more groups of population in Indonesia, shall be punished... By group in this and in the following article shall be understood each part of the population that distinguishes itself from one or more other parts of that population by race, country of origin, religion, origin, descent, nationality or constitutional condition.”¹¹

Also Article 157 (1) states, “*Any person openly demonstrates or puts up a writing or portrait where feelings of hostility, hatred and contempt against or among groups of the population of Indonesia are expressed, with intent to give publicity to the contents or to enhance the public thereof.*”¹²

These legal frameworks are generally disregarded by the law enforcers, unless there is a great public pressure to do so, as in the case of Rizieq Shihab and Munarman. The Article 156 has other problems, namely its very broad definition of hostility, hatred and contempt; which is different to the Article 20 ICCPR which defines hatred speech as producing hostility, discrimination and violence. This particular article does not cite any discrimination and violence as the result; or in that matter, any result that may define an act as a hate speech. This very broad interpretation has made the article susceptible to one-sided interpretation by the law enforcers (rubber law), and when the law enforcers please, they may just turn a blind eye towards certain individuals or groups.

Aside from hate speech, there are problems of defamation. The most crucial legislations on this are the Law No. 1/ PNPS/1965 and the article 156 (a) of the Criminal Code. The definition of defamation in the PNPS tends towards *forum internum*, in direct violation of freedom of expression and religious freedom, and in practice may constitute a dictatorship in the name of the majority; and thus its enforcement may depend on the will of the groups claiming to represent the majority, not on the existing facts. The whole paradigm of Law No. 1/ PNPS/1965, it should be noted, is discrimination; which not only works on its definition of defamation but also on what constitutes “legal religion.”¹³

This paradigm is a clear threat to religious freedom, and also of freedom to association. Those legislations empower the state to disband offending organization without first going through legal procedures. And thus those legislations are in direct violation of the 1945 Constitution and the internationally recognized principles in restricting rights. The PNPS, furthermore, empowers the President to restrict the rights in question armed with only Presidential Decrees, not requiring a full-fledged legislation.

¹¹ Indonesian Criminal Code Article 156

¹² Indonesian Criminal Code Article 157

¹³ See, Indonesian Law No. 1/ PNPS/1965

4. Other Laws

However, the threat against religious freedom does not stop at the national legislation; something made clear by various local legislations banning the Ahmadiyya. Those legislations seek to justify themselves by claiming that group itself is allegedly a threat to public order and has inflamed public hatred, and thus banning Ahmadiyya from preaching and performing religious rites in public. Similar local governmental decrees stemming from such local legislations are also proliferating. Such laws are ultimately based on the Joint Decree of the Ministry of Religious Affairs, Interior Ministry and the General Prosecutor, which bans Ahmadiyya from openly preaching its faith.

Before the Joint Decree was issued, the Ministry of Religious Affairs had convened seven dialogues with the Ahmadiyya group, from September 7, 2007 to January 14, 2008. This dialogue that purportedly seeks the best way to solve the “Ahmadiyya question” had been attended by the delegations from the said Ministry and the Ahmadiyya group, the National Police Headquarters, the Interior Ministry, the Coordinating Ministry on Public Welfare and a special deputy from Vice President’s Office. The Government then proceeded to declare that JAI (the Ahmadiyya) has violated the twelve points of the joint declaration and issued, on June 9, 2008, the said Joint Decree.¹⁴ The Joint Decree has been molded into a legislative base on which to issue various local legislations to ban Ahmadiyya, in several cases with the blessing of the Supervising Team on Indigenous Faiths, a task force empowered to keep an eye on faiths outside the legal religions.

Several instances come to mind, such as the Kuningan Mayor’s Decree no. 45/2/2065/Satpol PP, which closes and seals eight mosques frequented by Ahmadiyya members in the Village of Manis Lor, Kuningan, West Java; the local government of Bogor’s decree no. 300/448-Sekr banning the building of religious facilities for Ahmadiyya members in Cisalada, dated July 9, 2010, signed by the District Head of Ciampea, Lukmanul Hakim; the local government of Cianjur, West Java, issued a similar Decree on October 17, 2005, a Joint Decree of the Mayor, Head of District General Prosecutor and the local Ministry of Religious Affairs Office, banning the preaching of Ahmadiyya members in the area; then the Governor of South Sumatra issued Decree Number 563/KPT/BAN.KESBANGPOL dan LINMAS/2008 on the banning of Ahmandiyah and the activities of its members in the area, claiming the preaching of the group is against the teachings of Islam.¹⁵

Those legislations disclose the discriminatory nature of the state policy on guaranteeing religious and belief freedom in Indonesia. In many cases, the government itself hides behind the puritan minority amongst the majority religious group, claiming that voice to be the will of the whole majority. Those local legislations

¹⁴ See, Joint Decree of the Minister of Religion, the Attorney General and the Minister of Internal Affairs of the Republic of Indonesia (Number: 3 Year 2008, Number Kep-033/A/JA/6/2008, Number 199 Year 2008) Regarding Warning and order to Follower, Member, and/or Official Member of Jemaat Ahmadiyah Indonesia (JAI) and Members of Society; See also, Wahid Institute, *Annual Report on Belief and Religious Pluralism in Indonesia: Menapaki Bangsa yang Kian Retak* (Jakarta: Wahid Institute, 2009), pg. 10-11.

¹⁵ Lobby Paper of HRWG-Indonesia: Crimes against Humanity towards Ahmadiyya Community in Indonesia, 2011, pg. 2. *Paper not published.*

are small samples of the myriad of local legislations banning Ahmadiyya. The Jakarta Legal Aid Foundation's research uncovers at least five provincial legislations and 21 municipal legislations put a ban on Ahmadiyya in one or other ways.

C. State of Policy

The methods employed by the state policy in legalizing the discrimination are as follow:

- 1. Discriminatory policies;** which have its roots in the PNPS 1/1965, which only recognizes a number of religion as "legal religions." CERD has recommended its abolishment in 2007; however the law is still in effect today. Regarding the minority religions, even the "legal" ones, such discriminations are also in effect; for instance the difficulties faced by various Christian groups which try to establish a church or other religious services.¹⁶
- 2. Omission and silent commission.** The state are frequently guilty of omission and silent commission over the acts of discrimination or violence perpetrated by non-State actors: ransacking of religious facilities, attack on religious communities, even murders, are largely investigated in a disinterested way. In some cases, the judicial process even finds the perpetrators not guilty and releases promptly.¹⁷
- 3. Enforcement of values of a particular interpretation of the majority religion, direct or indirect.** This is a direct threat toward religious tolerance and has potentials of stigmatizations, to which violence will be a logical continuity.
- 4. Forced isolation and/or eviction.** It is now a common occurrence that the local governments, on grounds of public safety and order, forcibly evict the religious groups deemed in the contradiction with the majority; for instance, the eviction of Ahmadiyya members from Geregung, West Lombok, Nusa Tenggara Barat in 2006. The said people are still in the refugee because the ban on them is still in effect. A more appalling example came from the RDPU meeting of the Parliament, in which there was an initiative from several local governments and several MPs to put all Ahmadiyya members onto an island so that there will be no more "disturbance" amongst the Moslem majority.
- 5. Banning of the activities of particular sects.** There have been several such banning; such as that of Surga Adn in Cirebon, of the preaching of Syamsudin in Mandar, West Sulawesi who believed that he was a reincarnation of the prophet Khidr. The state's omission on such violence perpetrated by non-State actors has contributed to the high number of cases in which the perpetrators curb the

¹⁶ See, Wahid Institute, *Annual Report 2009: Kebebasan Beragama dan Kehidupan Keagamaan di Indonesia tahun 2009* (Jakarta: Wahid Institute, 2010), pg. 23.

¹⁷ From hundreds of violence acts happened at all times the Police have only processed less than 2 to 5 person as perpetrators that can be categorized as Field Actor, and have not come to touch the Intellectual Actor behind these actions, which had been identified by the Police. Quite the opposite, the Police in its place positioned or discredited the Ahmadiyah Congregation as the *raison d'être* of the incitement of those vehemence actions instead of as the victim. Lobby Paper of HRWG-Indonesia: *Crimes against Humanity towards Ahmadiyya Community in Indonesia*, 2011, pg. 3.

establishment of religious facilities. (In 2010, there were 17 of such cases compared to only 5 by the state).¹⁸

D. Practice of Incitement to Hatred.

One of the side effects of the current democratization process is the proliferation of incitement of hatred perpetrated by certain religious zealot groups, notably among the Moslems, towards other groups deemed heathen, gentile or simply a misinterpretation of the mainstream teachings. The zealot groups utilize such public functions such as the “*Tabligh Akbar*”, demonstrations, preaching in the mosque and public places. Even in the Youtube one may find an open proclamation from one of the FPI members, claiming the blood of Ahmadiyya members as “halal” for alleged infidelity towards Islamic teachings.

Those zealots utilize various issues such as the struggle for “Islamic syari’ah”, the threat of infidelity, and curbing of adultery to fill the public opinion to the brim with hatred towards religious minority groups or faith. The incitement ranges from mere call to disband a particular group to ordering murders of the members of said group. Even the parliamentary members and state officials also participate in this incitement, such as the statements from MPs from PPP party, and Suryadarma Ali, the Minister of Religious Affair.¹⁹ These political statements condone the non-State actors and brave them to increase their action, perceiving their action to be sanctioned by the state.

In February 2008, for instance, Shobri Lubis, a member of the central leadership of FPI, in a “*tabligh akbar*” in Banjar, calls for a “jihad” against Ahmadiyya. He said, “We wage war against Ahmadiyya, kill Ahmadiyya members, where ever they are, kill Ahmadiyya members, kill Ahmadiyya members.”²⁰ Consequently, on July 7, 2009, there was arson against an Ahmadiyya mosque in Peninggilan, Ciledug, Tangerang, perpetrated by two unknown person. The arson failed because the populace acted quickly to prevent fire spreading. The perpetrators left a banner that says, “Ahmadiyya infidels, killing them is mandatory (for Moslem).”²¹

Such statements, explicitly forbidden in the Indonesian Criminal Code, are never prosecuted; thus encouraging even more violent acts, which culminated in murder. The latest case of murder of two members of Ahmadiyya in Cekusik, Pandeglang, Banten gives a clear view of the results of such incitements.

¹⁸ Several cases about banning of religion or belief in Indonesia, see, Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), *Refleksi Keberagamaan Agama: Hukum Sesat dan Menyesatkan Hukum* (Jakarta, Indonesia: YLBHI, 2009).

¹⁹ “Menag: Ahmadiyah Harus Dibubarkan”, *Kompas.com*, (Jakarta), August 10, 2010. Accessed from <http://nasional.kompas.com/>; see also “Menag: Ahmadiyah Lebih Baik Dibubarkan Daripada Membiarkannya”, *Republika.co.id*, (Jakarta) Sunday, February 27, 2011. Accessed from <http://www.republika.co.id/berita/breaking-news/nasional/11/02/27/166446-menag-ahmadiyah-lebih-baik-dibubarkan-daripada-membiarkannya>

²⁰ See on *Youtube*, at <http://youtube.com/watch?v=U7RLCXNdKF4>.

²¹ Setara Institute, *Negara Harus Bersikap: Tiga Tahun Laporan Kebebasan Beragamaa/Berkeyakinan di Indonesia* (2007-2009), (Jakarta: Setara, 2010, pg. 59

E. State of Practice

Setara Institute has established that from the 286 recorded cases of violation against religious freedom, 103 have state officials as actors. From those 103, 79 were by commission, including condoning statements from public officials, and the rest are by omission. In many cases the state discriminates against the religious minorities, directly or indirectly. Those are the current modus operandi of the violation against religious freedom.

The state apparatus participate actively in disbanding, ransacking of religious facilities, physical attacks and other violations; in direct contradiction of their role as the protectors of the society. For instance, on Monday, July 26, 2010, there was an attack against Ahmadiyya Manislor, Jalaksana, Kuningang, West Java, in which the perpetrator were assisted by Satpol PP and police officers from Kuningan Municipality. On July 12, 2010, Satpol PP members cut down the pillars of an Ahmadiyya mosque under construction. The local government of Bogor bans the construction of the Yasmin Church, on grounds that the construction is illegal, disregarding the verdict from the Supreme Court that the GKI Yasmin has the legal rights to build its church. The state also denies the members of the indigenous faith their rights to fundamental rights; such as the requirement to declare that one is a member of one the six religions recognized by the law when performing marriage, which results in many children of the indigenous faith denied their rights to birth certificate.²²

The state is guilty by omission when it show disinterest against the violence perpetrated against religious minorities; especially considering the fact that the number of non-state perpetrators are continually increasing. In 2010, there were 183 recorded cases perpetrated by non-State actors including condoning, intimidation, intolerance, ban on religious services, forcible change of faith, bans on construction of religious facilities, blockade, forcible demolishing, attacks during religious services, declaring indigenous faiths as infidelity or attempted attack.

Recently even the Minister of Religious Affair is actively inciting hatred against Ahmadiyya, in direct violation of his duty to protect and guarantee the religious freedom for all people in Indonesia; furthermore, the Minister has been shown to participate in the public appearances with non-State actors, spreading propaganda for disbanding Ahmadiyya. []

²² HRWG Team, *Menuntut Pemenuhan Hak-hak Konstitusional Penghayat Kepercayaan terhadap Tuhan Yang Maha Esa. Op.cit.*

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- Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), *Refleksi Keberagamaan Agama: Hukum Sesat dan Menyesatkan Hukum* (Jakarta, Indonesia: YLBHI, 2009).
- Youtube, at <http://youtube.com/watch?v=U7RLCXNdKF4>.

Regulation and Instruments

- Decree of East Java Governor number 188/94/KPTS/013/2011 consisting of the prohibition of activities of Ahmadiyah Indonesia in East Java.
- Decree of Samarinda Mayor (East Kalimantan) number 200/160/BKPPM.I/II/2011 subjecting The Instruction of Terminating and Closing the Activities of JAI in Samarinda.
- Decree of the Governor of South Sumatera Number 563/KPTS.Ban.Kesbangpol & Linmas/2008 on prohibition of Ahmadiyah sect and its members and caretakers' activities in region of South Sumatra.
- Decree of the Mayor of Pekanbaru (Riau).
- Decree of the Regent of Kampar (Riau) Number 450/PUM/2011/68.

Governor of Banten also released Governor Regulation Number 5 of 2011 on the prohibition of activities of Ahmadiyah Congregation's members.

Indonensian Criminal Code

Indonesia Constitution (Undang-undang Dasar Republik Indonesia)

Indonesian Human Rights Law Number 39 Year 1999

Indonesian Law Number 1/ PNPS Year 1965

International Convention on Civil and Politic Rights (ICCPR)

Joint Degree of the Minister of Religion, the Attorney General and the Minister of Internal Affairs of the Republic of Indonesia (Number: 3 Year 2008, Number Kep-033/A/JA/6/2008, Number 199 Year 2008) Regarding Warning and order to Follower, Member, and/or Official Member of Jemaat Ahmadiyah Indonesia (JAI) and Members of Society.

Regulation of West Java Governor Number 12 of 2011 on the Prohibition of Ahmadiyah Congregation's Activities.